

OFFICE OF INSPECTOR GENERAL

**USE OF COUNTY ADA FUNDS
FOR THE INSTALLATION OF AN ELEVATOR
AND OTHER RELATED RENOVATIONS
AT THE SILVER SPRING LIBRARY**

REPORT OF INVESTIGATION

FEBRUARY 1999





OFFICE OF INSPECTOR GENERAL

Norman D. Butts
Inspector General

TO THE HONORABLE COUNTY COUNCIL AND COUNTY EXECUTIVE FOR
MONTGOMERY COUNTY, MARYLAND, AND BOARD OF EDUCATION AND
SUPERINTENDENT OF MONTGOMERY COUNTY PUBLIC SCHOOLS:

We have conducted an investigation into the use of County ADA funds for a project at the Silver Spring Library to address a citizen complaint. Our investigation was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States and Quality Standards for Investigations issued by the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. Those standards require that we plan and perform the investigation to provide a reasonable basis for our findings and conclusions. Accordingly, we performed such procedures as we considered necessary in the circumstances.

The purpose of our investigation was to assess whether County ADA funds were expended appropriately with respect to the installation of an elevator and other related renovations at the Silver Spring Library.

This report is the result of our investigation of the issue noted above and is intended for the information of the County Council, the County Executive, and management of the Division of Facilities and Services of the Department of Public Works and Transportation. This restriction is not intended to limit distribution of this report, which upon delivery to the County Council and County Executive is a matter of public record.

Office of Inspector General

May 14, 1999

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INTRODUCTION

Purpose and Scope of Investigation

This investigation was performed to address a citizen complaint. It was conducted in accordance with generally accepted government auditing and investigative standards. The purpose was to assess whether County Americans with Disabilities Act (hereinafter "ADA") funds were expended appropriately with respect to the installation of an elevator and other related renovations at the Silver Spring Library.

The Complaint

The complaint received by the Office of Inspector General alleged that the Division of Facilities and Services of the Department of Public Works and Transportation (hereinafter "DFS") use of ADA compliance funds constituted "fraud" because a portion of the money appropriated for ADA compliance, namely the \$20,000 used to relocate the children's reading room, was intentionally used for a purpose unrelated to ADA compliance. The complainant readily admitted his motivation in making the complaint was his concern that library officials were using the elevator installation as a pretext to relocate the children's reading room so that services to children could be merged with other services resulting in a net reduction of library staff.

Our purpose in investigating this complaint was not to second-guess library management's reasonable discretion to efficiently and effectively manage library operations. Therefore, whether or not relocation of the children's reading room resulted in a reduction in library staff was not within the scope of our investigation. However, a complaint alleging fraud is an important matter, one that will be taken seriously by our office, and one that will be investigated to an extent we determine to be professionally appropriate in the circumstances.

In situations where fraud, waste, and abuse are alleged and investigated, but later prove to be unfounded, we may scrutinize the matter further to determine whether or not management has complied with its own policies and procedures, administrative rules and regulations, and laws regarding such important issues as procurement, personnel, finance, and ethics.

INTRODUCTION (Continued)

Results in Brief

We found no evidence of fraud in the use of County ADA funds for the installation of an elevator and other renovations at the Silver Spring Library. However, at the time of our investigation, officials of DFS could not provide adequate documentation to support certain aspects of the project. There was insufficient documentation to support the ADA compliance decision making process and to support the relocation of the children's reading room. The following is a summary of our findings and recommendations:

| <i>Finding & Recommendation</i> | <i>Agency Response</i> |
|---|---------------------------------|
| 1. <u>No evidence of fraud.</u> (No recommendation.) | <i>Concur</i> |
| 2. <u>Unsupported cost (\$215,000).</u> Document why elevator was placed on ADA compliance list and document role of ADA coordinating committee. | <i>Do Not Concur</i> |
| 3. <u>Questioned cost (\$20,000).</u> Document costs charged to alleviate safety concern and return disallowed costs to general obligation bond funds as appropriate. | <i>Do Not Concur</i> |

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BACKGROUND

ADA Compliance

In 1990 the federal government passed the Americans with Disabilities Act (Public Law 101-336, codified at 42 USC §12101, et seq.). The ADA requires state and local governments to ensure that persons with disabilities are not excluded from any programs, services, or activities because buildings or programs are inaccessible. ADA regulations (Title II, §35.105) required all public entities to do self-evaluations of their policies, services, and programs.

Shortly after passage of the ADA the County began a process to address the requirements of the ADA. The County's ADA compliance program called for assessment, planning, and implementation of a Countywide disabled access management program for County facilities where access for persons with disabilities did not meet the ADA accessibility guidelines. Facilities were examined by County personnel using a Site Checklist for the Americans with Disabilities Act Accessibility Standards ("Site Checklist"). Facility surveys and program self-evaluations were to be conducted by the County ADA Coordinating Committee for the purpose of producing a general strategy for ADA compliance. The County had two broad areas of concern: site and exterior facilities accessibility (access into a building containing County programs and facilities); and building accessibility (access to programs and facilities within a building).

The County made a commitment to employ structural or physical modifications to make programs accessible "with due regard for fiscal constraints." In addition, where programs were already fully accessible (which the County stated was "true for virtually all programs directly serving the public") County government pledged to continue to improve signage and other access aids. Among other things, the County strategy was to provide for the following:

- Identification of physical barriers to be removed and alterations to be made as part of the plan;

BACKGROUND (Continued)

- final revision and adoption of the Transition Plan and Self-Evaluation Program; and
- review of the plan by the ADA Coordinating Committee on a regular basis, followed by updates and revisions adopted at least annually.

At the time the ADA compliance program was being implemented, County programs and services were accommodated at a total of 408 facilities including 21 libraries. The ADA facilities survey included 184 County facilities of which 132 were initially placed on the ADA Compliance Master Facilities List for funding through the capital improvements program. County Council revised appropriations for the ADA Compliance program from time to time. The FY99 appropriation totaled \$4,025,000 including \$3,950,000 from general obligation bond proceeds and \$75,000 from federal Community Development Block Grant funds. Plans to make necessary modifications to County facilities were undertaken by DFS.

The Silver Spring Library Project

The Silver Spring Library is located on Colesville Road in downtown Silver Spring. A driveway off the street provides access to the site. The library is housed in a one-story building with a walkout basement exiting in a parking lot at the rear of the building. Parking for persons with disabilities is located near the main entrance to the library. The main entrance is fully accessible. Additional parking, including additional parking for persons with disabilities, is located in a lot at the end of the driveway. The driveway slopes to basement level at the rear of the building. All public library services are provided on the main ground floor level.

The project in question, to install an elevator in the Silver Spring Library and to move the children's reading room, was part of a larger program to install elevators in four County facilities including the Wheaton/Glenmont Police Station, the Rockville Police Station, and the White Oak Library. Documents supplied by DFS show that the four elevator projects were originally placed on the ADA Compliance Master Facilities List in February 1993 with cost estimates of \$90,000 each, not including design costs or contingencies.

On August 27, 1996 an architectural and engineering services contract in the amount of \$85,937 was signed and a fixed price construction contract for the four elevators in the amount of \$927,800 was signed on July 10, 1997. Work on the elevators was completed in July 1998. Although no formal itemization for each individual elevator project is available, DFS officials estimated the work for the Silver Spring Library including relocation of the children's reading room was \$235,000. The cost associated with relocating the children's reading room was estimated at \$20,000.

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FINDINGS & RECOMMENDATIONS

Finding No.1: No Evidence of Fraud

We found no evidence of fraud by DFS or any other County officials in the use of County ADA funds for the installation of the elevator or relocation of the children's reading room at the Silver Spring Library. We found the project was competitively bid, the elevator was installed, and is working. In this instance to commit fraud as alleged by the complainant a County official would have had to intentionally deceive or mislead another to part with something of value, e.g., the intentional misuse of state, federal, or other non-County funds or misuse by a County employee of County funds for personal gain. Aside from the contractor, there was no other party involved with this project nor did any County official deceive or mislead another for personal gain. County officials and agents were simply using County funds to complete a County project.

Recommendation:

None.

Agency Response:

We concur.

Finding No. 2: Unsupported Cost (\$215,000) -- Lack of Sufficient Documentation to Support Installation of Silver Spring Library Elevator

We found a lack of sufficient documentation to support the installation of the Silver Spring Library elevator. We asked DFS officials and the County's ADA compliance officer for information about how decisions were made to fund specific ADA compliance projects such as the installation of the elevator at the Silver Spring Library. County officials provided us with some information but not enough to support the cost of the project.

FINDINGS & RECOMMENDATIONS (Continued)

The Silver Spring Library elevator project was part of a larger capital improvement program item to comprehensively deal with ADA compliance issues. The project description form (“PDF”) for ADA Compliance (MCG – 509206) stated, “This project provides for the assessment, planning, and implementation of a Countywide Disabled Management Program for County facilities...” The PDF further stated, “Facility surveys and program self-evaluations are being conducted under the auspices of the County ADA Coordinating Committee. A transition plan for facility modifications was completed in 1993.” When we asked DFS and the County’s ADA compliance officer for the Countywide Disabled Management Program, facility surveys, program self-evaluation surveys, and the transition plan for facility modifications, we were given informative, but general information regarding ADA compliance issues.

Although DFS provided us with the County’s Self-Evaluation Plan and Site Checklist for the Americans with Disabilities Act Accessibility Standards (hereinafter “Site Checklist”) the information was conflicting and did not adequately document why a decision was made to install an elevator at the Silver Spring Library. For example, the County’s Self-Evaluation and Transition Plan states, “In addition, even where programs are already fully accessible, as is true for virtually all programs directly serving the public, County government will continue to improve signage and other access aids.” On the other hand the PDF stated, “Many County facilities either did not have access or have access which is inadequate for disabled persons.” After reviewing the “Disabled Access Input Coding Form” found in the Site Checklist prepared for the Silver Spring Library, we know *how* an elevator came to be added to the ADA Compliance program -- a DFS project inspector recommended it. The information provided does not explain *why* an elevator was necessary, particularly if the library’s programs were among those “already fully accessible.”

Subsequent information we received from DFS did document the elevator as an item for inclusion in the ADA compliance program in February 1993. Construction costs for the elevator were estimated at that time to be \$90,000. DFS officials told us that figure was a “place holder” not an estimate (see: Appendix). The actual cost, including the relocation of the children’s reading room (more fully discussed below), was put at \$235,000.

Under the County’s ADA compliance program, the ADA Coordinating Committee and the ADA Coordinator had certain responsibilities for assessment, planning, and implementation of the program. For example, the transition plan was supposed to undergo review by the committee on a regular basis, followed by updates and revisions, adopted at least annually. Additionally, the coordinator was required to meet with each department to discuss issues which needed to be addressed and to assist in planning for appropriate means to resolve problems. We requested, but were unable to obtain, documentation supporting the committee and coordinator oversight roles in the program.

The cost of this portion of the project is an “unsupported cost.” An unsupported cost is a cost that is questioned by this office because at the time of our investigation, such cost was not supported by adequate documentation.

FINDINGS & RECOMMENDATIONS (Continued)

Recommendation:

We recommend DFS and the County administration take steps to more fully and clearly document all transactions and other significant events related to the project. Specifically, DFS and the County administration should document why the Silver Spring Library elevator project was placed on the ADA compliance list and the role the ADA coordinating committee played in project development.

Agency Response:

We do not concur.

In response to your written request of September 10, 1998, copies of the “Montgomery County Government Americans with Disabilities Act Self Evaluation and Transition Plan” and “Site Checklists for the Americans with Disabilities Act Accessibility Standards” for the Silver Spring Library were provided.

The “Self Evaluation and Transition Plan” provided not only an introduction and background information on Montgomery County’s efforts to comply with Title II of the Americans with Disabilities Act (ADA), but also provided details of the County’s transition plan to include: criteria for inclusion of facilities in the Transition Plan; prioritization criteria; categories for basic building accessibility; and a discussion of the FY93-98 ADA Compliance: General Government PDF (included as Appendix E of the “Self Evaluation and Transition Plan”). Note that the goal of the “Self–Evaluation and Transition Plan” was not to exclude projects, but rather, to identify and include all qualifying Title II ADA compliance requirements.

The “Site Checklists for the Americans with Disabilities Act Accessibility Standards” for the Silver Spring Library documented the current facility status as it related to Title II ADA compliance and included a “Disabled Access Input Coding Form” which identified the requirement to add an elevator at that facility.

The “Self Evaluation and Transition Plan” and the accompanying “Site Checklists for the Americans with Disabilities Act Accessibility Standards” documents the process, procedures, and criteria used to develop the ADA compliance program, identify the requirement for an elevator at the Silver Spring Library, and link the program to the ADA Capital Improvements Program through the ADA Compliance: General Government PDF.

As a follow-up to the coordination completed on January 4, 1999 between DFS and the Office of the Inspector General, additional documentation, “ADA Compliance – Master Facilities List” dated 05 Feb 93, was provided. This list identifies the facilities that were evaluated (to include the Silver Spring Library, FM#2012) during the planning process. Page 13 of the list provides an explanation for column headings “Type” and “Notes.” Construction-only costs of \$90,000 were initially applied in 1993 to all elevators on the

FINDINGS & RECOMMENDATIONS (Continued)

master Facilities List unless more site-specific information was available. This “place holder” construction cost helped establish the initial ADA program budget during the planning phase. The initial \$90,000 estimate was not based on any site-specific design (i.e., interior or exterior elevator) or operational requirement.

As planning and design for specific facilities progressed, more detailed costs were developed reflecting site-specific technical and operational requirements. The ADA Compliance PDF was updated by the County Executive and approved by the Council during each year, 1993 through 1999, to account for inflation, addition of new costs such as permits, refined cost estimate, and the addition of new projects. The intent of these yearly adjustments was to have the most accurate cost estimates available. The actual costs to construct the elevator at the Silver Spring Library, however, were determined through the County’s competitive bid process. The Silver Spring Library elevator was one of four elevator’s constructed through a single contract which was publicly advertised and awarded to the lowest responsive, responsible bidder through the County’s Office of Procurement.

OIG Rebuttal:

Concerning the Self Evaluation and Transition Plan: The document contained interesting, but very general information. It did not mention the Silver Spring Library. The information did not address our major concern: “Why was a \$235,000 elevator for the Silver Spring Library necessary?”

Concerning the Site Checklist: With respect to elevators, the document provided the following choices: add, replace, or modify. The fact that someone checked the “add” option still doesn’t answer the question, “Was this elevator necessary?”

Finding No. 3: Questioned Cost (\$20,000) -- Relocation of Children’s Reading Room

We found a lack of documentation to support the use of ADA compliance funds to relocate the children’s reading room. As part of the project the children’s reading room and the reference area exchanged locations. The complainant alleged the move was made so that library personnel assigned to the children’s reading room could be combined with personnel from other areas and overall staff reductions could be effectuated. DFS and library officials stated the relocation of the children’s reading room “resolves a security concern created by the installation of the elevator.” The concern, according to County officials, was having the elevator open directly into the children’s reading room. However, a floor to ceiling partition was subsequently built to eliminate the condition of the elevator opening directly into that area. Library officials told us the partition was built so books could not be easily stolen or otherwise inappropriately removed from the reference room, formerly the children’s reading room.

FINDINGS & RECOMMENDATIONS (Continued)

The use of ADA compliance funds for the relocation of the children's reading is problematic if the relocation was not related in a reasonable and rational way to the purpose of making facilities and programs accessible to persons with disabilities. If there was a genuine security concern for either books or children that would not have existed but for the installation of the elevator, then use of ADA compliance funds for building the partition is probably reasonable. However, without more explanatory information, using funds to exchange the reference room and children's reading room does not seem to be reasonably and rationally related to ADA compliance. We asked for documentation supporting the decision to relocate the children's room, but the documentation could not be provided.

The cost of this portion of the project is a "questioned cost." A questioned cost is a cost that is questioned by this office because of: an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement or document governing the expenditure of funds; a finding that, at the time of the audit or investigation, such cost was not supported by adequate documentation; or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

Specific standards for management control require documentation and recording of transactions and events. All transactions and other significant events should be clearly documented and the documentation should be readily available for examination

Recommendation:

We recommend DFS take steps to clearly document all transactions and other significant events. Specifically, DFS should document the safety concern caused by the project and what costs associated with alleviating that concern were appropriately charged to ADA compliance and general obligation bond proceeds. Any costs disallowed should be returned to ADA compliance and general obligation bond funds as appropriate.

Agency Response:

We do not concur.

Generally, as design proceeds on a project, a multitude of space issues may arise. These issues are typically discussed by the project team (DFS staff and staff from the customer Department/Agency) and decisions are "documented" by changes in the design. The fact that design plans are signed by the customer agency and DFS ensures that: (1) the entire design is within the project scope: and (2) the current cost estimates are within the budget. It is not productive or cost effective to attempt to document discussions on every design issue that is discussed by the project team. Only those issues that result in a change to the project design are documented and the "documentation" consists of a coordinated change in the design.

FINDINGS & RECOMMENDATIONS (Continued)

Once design of the Silver Spring Library Improvements was underway, the impact of the elevator addition on the operation/security of the library and the decision to relocate the children's reading room were coordinated through direct telephonic contact between DFS and the Department of Libraries. The decision to relocate the children's reading room was "documented" through a written space plan developed by DFS and approved by the Department of Libraries.

OIG Rebuttal:

Concerning the use of bond funds for relocation of the Children's reading room: bond funds should not be used for operating expenses.

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APPENDIX

Comparison of County Library Elevator ADA Compliance Projects

| <u>Library</u> | <u>Was elevator on 1993 ADA Master Facilities List?</u> | <u>Amount of original "Place Holder"</u> | <u>Is program/facility similar to Silver Spring Library?^{1/}</u> | <u>Was elevator installed?</u> |
|-----------------|---|--|---|------------------------------------|
| Davis | Yes | \$98,293 | Yes | Yes |
| Longbranch | Yes | \$90,000 | Yes | Yes |
| Kensington Park | Yes | \$90,000 | Yes | No ^{2/} |
| Silver Spring | Yes | \$90,000 | -- | Yes |
| Twinbrook | Yes | \$90,000 | Yes | No |
| White Oak | Yes | \$90,000 | Yes | Yes |

Notes: 1/ Two-story building with most library services on main floor; meeting room(s), other non-library services may be on the other floor.

2/ In place of an elevator this library has an "on-demand" wheel chair lift.

Source:OIG analysis of DFS data